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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re S.F., a Person Coming Under the  
Juvenile Court Law.

B237575  
(Los Angeles County  
Super. Ct. No. CK89634)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.F.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Rudolph A. Diaz, Judge. Reversed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, Tracey F. Dodds, Principal Deputy County Counsel, and Jeanette Lee Cauble, Deputy County Counsel, for Plaintiff and Respondent.

L.F. (Mother) appeals from the juvenile court's November 18, 2011 jurisdictional and dispositional orders adjudging minor S.F. a dependent of the court pursuant to Welfare and Institutions Code section 300, subdivision (b) (failure to protect).<sup>1</sup> Mother contends that there was insufficient evidence to support the jurisdictional order. We agree because there was no substantial evidence in the record to show that as a result of Mother's mental and emotional problems, S.F. suffered or will suffer serious physical harm because of Mother's failure to supervise or protect her adequately within the meaning of section 300, subdivision (b). We reverse the jurisdictional and dispositional orders.

### **BACKGROUND**

On September 8, 2011, the Department of Children and Family Services (DCFS) filed a petition on behalf of S.F., born in December 2008. As sustained, the petition alleged under section 300, subdivision (b) that "[Mother] has a history of mental and emotional problems including a diagnosis of Bi-Polar Disorder and Schizophrenia. [Mother] has failed to take [her] psychotropic medication as prescribed. Due to [her] mental and emotional problems, [Mother] is unable to provide regular care for [S.F.] Such mental and emotional condition on the part of [Mother] endangers [S. F.'s] physical health and safety and places [S.F.] at risk of physical harm and damage."

The events leading up to the filing of the petition were as follows. In February 2010, DCFS received a referral of general neglect and caretaker absence by Mother. The allegation of general neglect was determined to be unfounded, but the allegation of caretaker absence was substantiated. A voluntary family maintenance case was opened and closed after Mother refused services. In January 2011, a referral of general neglect was closed as unfounded. On August 8, 2011, DCFS received a referral with respect to the instant petition that Mother's home was filthy, S.F. was underweight and dirty, there was no food in the refrigerator, and Mother and her girlfriend got in a fight and broke windows in Mother's home. On August 9, 2011, DCFS observed S.F. to be well-

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

groomed and age-appropriate in development. S.F. did not have any marks or bruises. S.F. was able to state Mother's name and her own age. DCFS observed that Mother's home did not have any "immediate" safety hazards. The electricity was not working and there was no food in the refrigerator, but there was nonperishable food and bread in the home. There was a scent of cigarettes in the home and cigarette stubs on the window sills. The bathroom sink was full of "moldy green water," but the bathtub was clean. Flies hovered over S.F.'s bed.

Mother told DCFS that there was no food in the refrigerator because the electricity had been turned off two days previously. Mother said she had nonperishable food in the home. Mother stated that because the landlord refused to fix the sinks in the bathroom and kitchen, the standing water attracted flies. She also said she and S.F. stayed at "[parental grandmother's] home or friend's home at night time." Mother stated that S.F. has her own bed, she bathes S.F. twice a day, and she feeds S.F. three or four times a day.

Mother reported she had been placed in foster care at the age of 14 due to physical abuse by maternal grandmother. Mother, who was 23 years old in 2011, stated a psychiatrist had diagnosed her as bipolar and schizophrenic when she was 14 years old but told her she needed only therapy and not medication. She was willing to undergo a psychiatric evaluation, willing to go back to therapy, and had begun attending parenting education classes in September 2011. She also attended individual counseling at her church. On August 30, 2011, when Mother's mental health was evaluated per DCFS's recommendation, she reported she had experienced serious suicidal ideation, depression, and auditory hallucinations in the past. But the voices Mother heard never instructed her to hurt herself or others. She attempted suicide when she was 14 years old and had been placed on a hospital hold for suicidal ideation when she was 15 years old. Mother was in therapy until she was 18 years old. She discontinued therapy because the South Bay Cal Works office, which provided her with benefits, relocated and did not contact her again. From 2008 until 2011, Mother saw a psychiatrist once a month, who prescribed medication for depression and sleeplessness. Mother stopped taking

psychotropic medication around June 2011. She denied current suicidal or homicidal ideation and stated that she had not had auditory hallucinations for a ““while now.”” At the August 30, 2011 assessment she stated she had been experiencing “serious depression” and had been “moderately troubled by psychological or emotional problems in the last thirty days” but “expressed no need for treatment for those problems.” She did not want to resume taking psychotropic medications, which she believed were not necessary “as long as she is not agitated by others.” Mother “has never worked,” but “earns a variable income through ““braiding hair,”” of up to \$350 per month and is currently seeking employment. She receives \$516 per month in welfare aid. She also receives financial assistance from maternal great-grandmother. Mother had a juvenile criminal history, but no adult history of crime. Mother denied alcohol and drug use. Mother reported that she broke up with her girlfriend around June 2011. She denied that she had engaged in domestic violence with her former girlfriend. The therapist who prepared the mental health assessment on August 30, 2011, recommended that Mother maintain “a sufficient level of mental health” to provide care for S.F., participate in a parenting course, participate in individual counseling and a psychiatric evaluation, receive assistance in securing a bed, and follow through with attempts to secure financial assistance.

A South Bay Mental Health Clinic mental health therapist, who had treated Mother previously, reported that Mother had a history of having mental health cases opened and then closed for inactivity, and that a mental health case had been opened in March 2011 and closed in May 2011. A letter dated April 20, 2010 from the South Bay Mental Health Clinic stated that Mother “does not meet criteria that requires treatment such as medication.”

Maternal great-grandmother stated that both Mother and maternal grandmother had been diagnosed as bipolar. Mother does better when on medication but does not take her medications daily and gets upset easily when not on the medication. Maternal great-grandmother had no concerns about Mother’s parenting skills. Mother properly cares for S.F., who always has food, diapers, and wears clean clothes. Mother’s home is

not filthy. Maternal great-grandmother supports Mother and helps her out with whatever she needs. Mother's girlfriend, with whom she had recently broken up, "broke the windows at the home and she paid to have them fixed." While Mother and her girlfriend "[used to] have verbal altercations," Mother and her girlfriend had never had physical altercations or engaged in physical violence in front of S.F.

Maternal grandfather stated that he was concerned about S.F.; Mother is unstable and easily agitated; and Mother's girlfriend buys marijuana and beer with Mother's money. Maternal grandfather also stated that maternal grandmother has mental health problems and maternal grandmother told Mother she had left Mother with "Children Services" because she did not want Mother, and had threatened to take S.F. away from Mother. He believed that Mother's mental issues did not affect her parenting, although he stated her parenting skills could be improved.

S.F.'s pediatrician reported that S.F. had a physical examination on December 17, 2010, her immunizations were to date, there were no concerns of abuse or neglect, S.F. had no medical problems, and no medications were being prescribed for S.F.

On September 1, 2011, DCFS visited Mother's home and observed that the electricity was working and there was adequate food in the refrigerator. At a team decision-making meeting that same day, after initially expressing reluctance, Mother agreed to enroll in a parenting class, resume therapy, and take psychiatric medications prescribed by South Bay Mental Health Clinic doctors. On September 8, 2011, the juvenile court ordered S.F. detained from Mother and placed in foster care and ordered monitored visits for Mother. DCFS was ordered to assist Mother in obtaining medication and treatment.

Prior to the jurisdictional hearing, DCFS observed S.F.'s speech was limited and she did not appear to know the difference between nodding "yes" and shaking her head "no." S.F. did not engage in play. S.F. had a good appetite and adjusted well at school and in the foster home. Mother acted appropriately with S.F. during visits, and S.F. was happy to see Mother.

On October 16, 2011, S.F. was examined by a dentist who determined that she had six cavities. DCFS contacted S.F.'s previous dentist who stated that S.F. last had been seen on November 3, 2010, when she had four cavities. The dentist had performed a pulptomy, which is a "baby [root] canal," and Mother had been advised to bring S.F. in every three months to check for infections. Mother thought she did not need to bring S.F. to the dentist again until a year after the procedure.

S.F. was placed in foster care on September 8, 2011, but was removed from that placement on September 13, 2011, because she was not being properly cared for and she had bed bug bites. S.F. was replaced in foster care. On November 10, 2011, Mother complained to DCFS that S.F. was being hit by the foster mother. Mother stated that she had generated a referral on the foster mother. The foster mother gave a seven-day notice and requested that S.F. be removed from her home.

On November 18, 2011, after argument at the contested jurisdictional hearing, the juvenile court sustained the section 300, subdivision (b) petition. The court stated that Mother was choosing not to avail herself of treatment, which put S.F. at risk. The court stated that S.F. had been exposed to "less than appropriate" living conditions. At disposition, the court ordered Mother to attend a parenting class and to participate in individual counseling to address her diagnoses of schizophrenia and bipolar disease and issues of suicidal ideation and depression. The court ordered Mother to be assisted with psychiatric services and to be compliant with psychiatric care, including taking appropriate and prescribed medications. The court ordered S.F. to be evaluated by the regional center. Mother appealed.

## **DISCUSSION**

### **There was insufficient evidence to support jurisdiction under section 300, subdivision (b)**

Mother contends that there was insufficient evidence to support jurisdiction under section 300, subdivision (b) because DCFS did not show that Mother failed to supervise or protect S.F. adequately, causing her to suffer or that she will suffer serious physical harm or illness. We agree.

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left . . . .”

“A jurisdictional finding under section 300, subdivision (b) requires:

“(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the child, or a ‘substantial risk’ of such harm or illness.” [Citation.]’ [Citations.] The third element ‘effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).’ [Citation.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) DCFS has the burden of showing specifically how the minor has been or will be harmed. (*Id.* at p. 136.)

The juvenile court’s jurisdictional finding that the minor is a person described in section 300 must be supported by a preponderance of the evidence. (§ 355; Cal. Rules of Court, rule 5.684(f).) “““When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.]” [Citation.] While substantial evidence may consist of inferences, such inferences must rest on the evidence; inferences that are the result of speculation or conjecture cannot support a finding. [Citation.]” (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1258–1259.)

*In re James R.*, *supra*, 189 Cal.App.4th 1251 is instructive. In that case, the appellate court held that the evidence was insufficient to support the juvenile court’s finding under section 300, subdivision (b) that the minors were at substantial risk of

suffering serious physical harm or illness based on the mother's mental illness or substance abuse or the inability of the father to protect them. (*James R.*, *supra*, 176 Cal.App.4th at p. 131.) There, the minors came to DCFS's attention when the mother was hospitalized after having a negative reaction to taking ibuprofen and alcohol together while caring for the minors. At a home visit, DCFS noted that the minors were not malnourished, had no unexplained bruises, and did not appear to be afraid of the mother. (*Id.* at p. 133.) The mother shared parenting responsibilities with the father and had supportive family members who assisted with child care. And the parents were very attentive to the minors' academic and medical needs. But the mother had a history of suicide attempts, had been hospitalized for mental health issues approximately five times, had been treated for depression, and had not complied with recommendations of health care providers. (*Id.* at p. 132.) A social worker testified that if the mother did not follow through with treatment, obtain proper help, and learn to cope with her problems, she might want to hurt herself and the minors could be exposed to the mother's conduct. (*Id.* at p. 134.)

The *James R.* court recognized that DCFS has the “burden of showing specifically how the minors have been or will be harmed and harm may not be presumed from the mere fact of mental illness of a parent.” [Citation.]” (*In re James R.*, *supra*, 176 Cal.App.4th at p. 136.) And “[w]ithout the history of abuse and neglect, it is nearly impossible to determine whether [the minors are] at risk of suffering from the same abuse and neglect.” [Citation.]” (*Ibid.*) The court held that any causal link between the mother's mental state and future harm to the minors was speculative. (*Ibid.*) Although the mother “had a history of mental instability, she had not abused or neglected the minors in the past.” (*Ibid.*) There was no evidence that the mother had suicidal ideation after the birth of the minors or of a determination that the mother was a danger to herself or others. Rather, the social worker merely speculated that if the mother did not follow through with treatment she might want to hurt herself and expose the minors to a suicide attempt. And the evidence showed that the father and other family members supported the mother in her care of the minors, who were healthy, well cared



for, and never unsupervised. The court concluded that there was no evidence of a specific, defined risk of harm to the minors resulting from the mother's mental illness or substance abuse, and no evidence the father did not or could not protect them. (*Id.* at p. 136; *In re Daisy H.* (2011) 192 Cal.App.4th 713, 718 [juvenile court's order asserting jurisdiction over minors reversed because there was no evidence that father's alleged paranoia and hallucinations were linked to physical harm or risk of physical harm to minors as required for jurisdiction pursuant to section 300, subdivision (b)].)

We conclude that any link between Mother's mental health issues and actions on the one hand, and any harm or future risk of harm to S.F. on the other, was speculative and unsupported by substantial evidence. DCFS has not shown evidence of a specific, defined risk of harm to S.F. resulting from Mother's mental illness or failure to obtain treatment. Mother denied suicidal or homicidal ideation, had not heard voices for a "while now," and did not feel a current need for treatment for her mental health issues. An April 20, 2010 letter from South Bay Mental Health Clinic indicated that she need not take medications for her mental health issues. The therapist who evaluated her on August 30, 2011, while recommending that Mother maintain a "sufficient level of mental health" to provide care for S.F., made specific recommendations only as to Mother's participation in parenting classes and individual counseling and undergoing a psychiatric evaluation. And although Mother was reluctant initially to comply with services and resume psychotropic medication, she ultimately agreed at the team decision-making meeting on September 1, 2011, to enroll in a parenting class, resume therapy, and take medication as prescribed by a South Bay Mental Health Clinic provider. Mother had family support in caring for S.F. from maternal great-grandmother, who reported that Mother kept the house clean and cared properly for S.F., who was always well-dressed and fed. Although maternal great-grandmother believed that Mother does better when she takes her medication, she stated she had no concerns about Mother's parenting skills. Likewise, maternal grandfather stated that Mother's mental health issues did not affect her parenting.

Further, on August 9, 2011, upon investigating the current allegation, DCFS noted that S.F. was well-groomed and clean, age-appropriate in development, had no marks or bruises, and there were no immediate safety hazards in the house. And although the electricity was not working and the refrigerator did not contain food, Mother had nonperishable food for S.F. in the home. During a subsequent visit on September 1, 2011, Mother had resolved the problems with her living conditions: the electricity was restored and there was adequate food in the refrigerator. What is more, S.F.'s doctor reported that S.F. was up to date on her immunizations, and there were no medical concerns. While S.F. was found to have multiple cavities at an appointment on October 8, 2011, after S.F. was detained from Mother's care, DCFS has not shown that Mother's mental health issues caused Mother to neglect S.F.'s dental care as Mother had last taken S.F. to a dentist on November 3, 2010, when four cavities were treated. Although that dentist advised Mother to bring S.F. in every three months to check for infections, Mother thought she did not need to bring S.F. to the dentist again until a year after the procedure, and there is no evidence that Mother's mental health issues affected Mother's decision not to bring S.F. back to the dentist before then. Nor is there evidence linking S.F.'s limited speech and failure to engage in play during DCFS's observation to Mother's mental health issues.

Because there was insufficient evidence to support jurisdiction under section 300, subdivision (b), we reverse the juvenile court's jurisdictional and dispositional orders.

**DISPOSITION**

The November 18, 2011 jurisdictional and dispositional orders of the juvenile court are reversed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

JOHNSON, J.